Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte EBRAHIM SIMHAEE

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Appeal No. 2002-0358
Application No. 09/076,356

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ON BRIEF

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Before COHEN, STAAB, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Ebrahim Simhaee appeals from the final rejection (Paper No. 18) of claims 1 through 3, all of the claims pending in the application.

THE INVENTION

The invention relates to a plastic bag dispenser which is defined in representative claim 1 as follows:

1. A dispenser for dispensing plastic bags wound in a

roll on a hollow cylindrical core, comprising

a one piece, integral molded plastic body having a bottom panel, sidewalls extending upwardly from said bottom panel, and means for separating individual bags from said roll, wherein said sidewalls converge from said bottom panel so as to apply a braking force to a core supported between said sidewalls, said sidewalls each including an inner stub axle for receiving an end of said hollow cylindrical core, the diameters of the stub axles relative to the inner diameter of the core being such that the core can rotate on the axles but its rotation is retarded by friction between the inner surface of said core and the stub axles.

THE PRIOR ART

The references relied on by the examiner to support the final rejection are:

Adams	3,799,466	Mar. 26, 1974
Anderson	4,771,966	Sep. 20, 1988
Kannankeril et al.(Kannankeril)	5,813,585	Sep. 29, 1998

THE REJECTIONS

Claims 1 and 2 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kannankeril in view of Adams.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kannankeril in view of Adams and Anderson.

Attention is directed to the appellant’s main and reply

briefs (Paper Nos. 21 and 25) and to the examiner's answer (Paper No. 22) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

DISCUSSION

Kannankeril, the examiner's primary reference, discloses "a dispensing apparatus adapted for serially dispensing plastic bags from wound rolls" (column 1, lines 12 and 13). As described by Kannankeril with reference to Figures 1 and 2,

> [t]he apparatus 10 includes a container, generally indicated at 12 and a mounting bracket, generally indicated at 22.
>
> The container 12 has a unitary construction formed from a pair of opposed sides 14, a pair of flanges 16 extending generally transverse to the sides, a bottom 18 positioned below the sides, providing support therefor and a separating means or tongue 20 extending outwardly from the bottom 18. The container 12 is adapted to receive a wound roll of plastic bags AA [column 4, lines 31 through 40].

The bracket 22 allows the container 12 to be mounted in the same desired orientation in a plurality of different environments (see Figures 6 through 11). Of this orientation, Kannankeril teaches that

> the desired orientation of the container 12 is such that the wound roll, regardless of its size . . . is biased against the flanges 16 and the bottom 18. Preferably, the container 12 is oriented approximately 45E form horizontal. In this orientation, the juncture of the bottom 16 and the opposed sides 14, which are joined at an angle approaching 90E, form the lower most point of the

> container 12. It is the combination of this orientation of the container 12 and the connection of the bottom 18 and the sides 14 which encourages self-braking of the wound roll and [discourages] or limits the wound roll from overspinning or moving away from the flanges 16 and the bottom 18 as the wound roll unwinds due to advancement of the plastic bags AA out of the container 12. . . . In practice, the orientation of the container 12 and the configuration of the flanges 16 and the downward orientation of the separating means 20 creates a pinching effect on the wound roll to prevent it from over-spinning regardless of the size of the roll [column 5, lines 30 through 49].

Kannankeril also indicates that while the roll of plastic bags need not be mounted on an axle, if desired an axle may be provided within the container 12 to rotationally support the roll (see column 6, lines 50 through 58).

As conceded by the examiner (see pages 3 and 4 in the answer), Kannankeril fails to respond to the limitations in representative claim 1 requiring the sidewalls (1) to converge from the bottom panel so as to apply a braking force to a core, and (2) to each include an inner stub axle for receiving an end of the core. To overcome these deficiencies, the examiner turns to Adams.

Adams discloses a ribbon/tape dispenser 1 comprising a U-

shaped yoke 2 and an attachment support clip 3. The yoke, which is made of spring sheet metal, includes a back 6, sides 4 and 5 extending from the back so as to be resiliently biased or converged toward one another (see Figure 1), and bosses 7 and 8 disposed on the sides for rotatably engaging the ends of a roll. The inward bias of the sides applies a restraining force to the roll which prevents unintentional unwinding.

In proposing to combine Kannankeril and Adams to reject claim 1, the examiner concludes that it would have been obvious to modify the dispenser disclosed by Kannankeril "by making the sidewalls converge and [making] the axle into opposed axle stubs, in order to provide a frictional restraint on the stored material . . . and/or to provide easy removal of the material roll as taught by Adams" (answer, pages 3 and 4). The examiner does not explain, however, nor is it evident, why a person having ordinary skill in the art would find it desirable to increase the frictional restraint capability already embodied in the Kannankeril dispenser. Too much frictional restraint would be counterproductive since it would unduly hinder rotation of the roll. Similarly, the addition

of stub axles to the Kannankeril dispenser ostensibly would hamper, rather than facilitate, removal of the roll. Furthermore, and as pointed out by the appellant, the proposed modification of the Kannankeril dispenser in view of Adams would destroy the self-braking characteristic sought by Kannankeril. In light of the foregoing, it is evident that the only suggestion for combining Kannankeril and Adams in the manner advanced by the examiner stems from hindsight knowledge impermissibly derived from the appellant's disclosure.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 1, and claim 2 which depends therefrom, as being unpatentable over Kannankeril in view of Adams.

As Anderson's disclosure of a paper towel dispenser having an adhesive mounting component does not cure the above noted shortcomings of the Kannankeril-Adams combination, we also shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 3, which depends from claim 1, as being unpatentable over Kannankeril in view of Adams and Anderson.

As a final matter, upon return of the application to the

technology center, the examiner should consider whether U.S. Patent No. Des. 409,027, granted to the appellant on May 4, 1999, raises an obviousness-type double patenting issue with respect to the subject matter claimed in the instant application.

SUMMARY

The decision of the examiner to reject claims 1 through 3 is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
LAWRENCE J. STAAB Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOHN P. McQUADE Administrative Patent Judge	)	

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